

REMARKS

The claims have been amended to more clearly define the invention as disclosed in the written description. In particular, claims 4, 16, 22 and 24 have been cancelled; claims 7 and 9 have each been made proper independent claims and include the limitations of claim 1; claim 1 has been amended to include the limitations of cancelled claim 4; claim 5 has been amended such that it now depends from claim 1; claim 11 has been amended such that it now depends from any one of claims 1, 7 and 9; claim 14 has been amended to include the limitations of cancelled claim 16; claims 15 and 17-19 have each been amended such that they each depend from claim 14. In addition, the claims have been amended for clarity.

The Examiner has rejected claim 22 under 35 U.S.C. 112. Applicants submit that the cancelling of claim 22 renders this rejection moot.

The Examiner has rejected claims 23 and 24 under 35 U.S.C. 101, as pertaining to non-statutory subject matter.

Claim 23, as amended above now claims a "computer-readable medium having stored thereon a computer program comprising program code means for performing a method as claimed in any one of claims 14, 15 and 17 to 21 when said program is run on a computer". Applicant submits that claim 23 complies with the requirement "a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the

computer which permit the computer program's functionality to be realized, and is thus statutory. See Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035." (MPEP § 2106.01(I)).

The Examiner has rejected claims 1, 3, 12-14, 16, 18, 20, 23/13, 23/14, 23/16, 23/18, 24/13, 24/14, 24/16, 24/18 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,796,842 to Hanna. The Examiner has further rejected claims 2, 8, 15, 17, 19, 21, 22, 23/15, 23/19, 23/21, 23/22, 23/17, 24/15, 24/19, 24/17, 24//21 and 24/22 under 35 U.S.C. 103(a) as being unpatentable over Hanna. In addition, the Examiner has rejected claim 6 under 35 U.S.C. 103(a) as being unpatentable over Hanna in view of U.S. Patent 7,130,433 to Suzuki. Applicant acknowledges that the Examiner has found claims 4, 5, 7 and 9-11 allowable over the prior art of record.

In view of the above claims, Applicants believe that the above rejections in regards to claims 1-3 and 5-13 have been rendered moot.

With regard to claim 16, the Examiner has indicated that the limitations therein may be found in Hanna in Fig. 3; and col. 9, line 64 - col. 10, line 15 "noise removed based on filter specified".

As noted in MPEP § 2131, it is well-founded that "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of*

California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Further, "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Claim 14 (which now includes the limitations of cancelled claim 16) includes the limitations "measuring a background noise level" and "determining the cut-off frequency (f) in dependence on the measured background noise level (S)".

Applicant submits that Hanna neither discloses measuring a noise level, nor determining the cut-off frequency in dependence on the measured noise level. Rather, Hanna states:

"High pass filters 212, 214 preferably have substantially identical responses and preferably remove D.C. components from the left and right channel audio input signals. As will be discussed in greater detail below, this D.C. removal prevents encoder 200 from exhibiting a behavior referred to as "ticking". Since the audio information content of the left and right channel audio input signals of interest is considered to be within a frequency band between 50 Hz and 15,000 Hz, removal of D.C. components does not interfere with the transmission of the information content of the audio signals. Filters 212, 214, therefore, preferably have a cutoff frequency below 50 Hz, and more preferably have a cutoff frequency below 10 Hz so that they will not remove any audio information contained in the audio input signals. Filters 212, 214 also preferably have a flat magnitude response in their passband. In one preferred embodiment, filters 212, 214 are implemented as first order infinite impulse response (IIR) filters, each having a transfer function $H(z)$ given by the formula shown in the following Equation (1)."

It should be clear from the above that Hanna is merely describing the characteristics of the high-pass filters which

filter the input audio signal. However, there is no disclosure or suggestion of measuring background noise (external from the input audio signal, nor of determining the cut-off frequency of the filters based on the measured background noise.

Since claims 15 and 17-21 depend from claim 14, Applicant submits that these claims should also be allowable.

Applicant believes that this application, containing claims 1-3, 5-15, 17-21 and 23, is now in condition for allowance and such action is respectfully requested.

Respectfully submitted,

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